IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3496 OF 2007

ALONGWITH

WRIT PETITION NOS. 3479 & 3493 OF 2007

Zadona Electronic Ltd. & anr..... Petitioner

versus

Sharad B. Gogte & anr. ..... Respondent.

Shri J.P.Cama Sr. adv. with A.K. Jalisatgio & Amol B. Desai for the petitioner.
Ms. Jena Cox for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 21ST JUNE, 2007

P.C.;

1. The respondents were working in the Thane factory of the petitioner for the period ranging between 20-30 years. On 30-3-1993 the petitioner company issued a notice offering Voluntary Retirement Scheme to the workers. Under the scheme the company offered payments by way of gift, retrenchment compensation, retirement compensation, notice pay, leave encashment, gratuity and PPF as per rules. The company further made an offer that if the workmen so chooses, the company shall retain the amount payable under the Voluntary Retirement Scheme for a period of three years and in lieu of retention of the said amount, pay

incentive at the rate of 2% per month i.e. 24% per annum. Relying on the terms of the Voluntary Retirement Scheme, the workers chose the option to retain the amount with the petitioner as suggested by the petitioner. The petitioner failed to return the amount retained by it under the voluntary retirement scheme as per the schedule of deferred payments. Thus the workers moved an application under section 33(c)(ii) of the Industrial Dispute Act and claimed the amount due from the petitioner and recoverable by the workers, which was retained by the petitioner though payable to the workmen under the voluntary retirement scheme.

2. The main objection on behalf of the petitioner was that the workers have invested the amount which they have received under the voluntary retirement scheme with a view to earn higher rate of interest and the transaction in question is purely a commercial transaction. It was as such objected that the application under section 33(c)(ii) is not maintainable. It is not in dispute that the workers had not infact received the amount from the petitioner under the voluntary retirement scheme but under the option given by the petitioner, the workers permitted the pettioner company to retain the amount with it and the amount so retained was to be repaid by making deferred payments by the petitioner together with

interest at the rate of 24%.

3. It is the case of the workers that some of the cheques which they received from the petitioner were dishonoured and hence the workers were constrained to approach other forums as well, by initiating appropriate proceedings including filing of complaint under section 138 of the Negotiable Instrument Act.

4. The Labour Court has categoritally held thatthe claim made by the workers under section 33(c)(ii) pertains to the amount receable under the voluntary retirement scheme and thus an application under section 3(c)(ii) is maintainable. For recording the said finding, the labour court has referred to the phraseology used in the notice offering voluntary retirement scheme. The major portion of the amount which the workers were to received under the voluntary retirement scheme was in relation to retrenchment and retirement compensation and the relevant option contained in the scheme reads thus:

> "The workmen shall however be at liberty to retain this amount with the company at the rate of 2% per month incentivem provided the amount is retained for three years."

Drawing support from the language used in the

voluntary retirement scheme, the labour court has concluded that what is claimed by filing an application under section 33(c)(ii) is the benefit which the workers were to receive under the voluntary retirement scheme. So holding, the labour court has proceeded to allow the application.

5. The learned counsel for the petitioner company has submitted that the labour court did not have jurisdiction to try the application moved by the workers as the claim pertains to an amount invested by the workmen. Having regard to the nature of the voluntary retirement scheme, I have no iota of doubt that the workers have not made any investment after receiving the payment under the voluntary retirement scheme but the company has chosen to retain the amount and thus deferred the payment under the voluntary retirement scheme.

6. The learned counsel appearing for the workmen has rightly relied upon a judgment in the case of **National Buildings Construction Corporation Ltd. Vs. Pritam Singh Gill and others reported in AIR 1972 S.C. 1579.** The Supreme Court has held in para 7 of the judgment thus:

" Section 33-C(2) must be so construed as to take within its fold a workman, who was

> employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term workman as used in section 33-C(2) includes all persons whose claim, requiring computation under this sub section is in respect of an existing right arising from his relationship as an industrial workman with his employer."

Applying the ratio laid down in the said judgment, I am of the clear view that the application filed by the workman before the labour court was very much maintainable.

6. The learned counsel appearing for the respective parties submit that the issue involved in other two writ petitions is between the same company and its workmen and the issue is similar to the one raised in the W.P. No.3496 of 2007. Though the voluntary retirement scheme is to some extent different, still the main feature remains the same i.e. securing the option from the workmen for retaining the amount payable under the voluntary retirement scheme with promise to make over deffered payments together with incentives. Hence writ petitions are summarily dismissed.

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